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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,032	06/24/2003	Gary G. Gordon	TRW(FAS)5959	1777

7590 10/06/2004

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,032

Applicant(s)

GORDON, GARY G. *st*

Examiner

Katherine W Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/24/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 6/24/2003 was filed properly, and is being returned by examiner. However, two non-patent literature documents, both TRW documents, cannot be located and thus have been crossed out by examiner as not considered. Applicant is requested to submit duplicate copies of these documents for consideration. Examiner will consider the documents and return another copy of the IDS with there documents initialed as considered. If these documents are found to be relevant prior art and used in a rejection, the action will not be made final unless the rejection is necessitated by amendment. Accordingly, the information disclosure statement is now being only partially considered by the examiner.

Claim Objections

2. Claim 3 is objected to because of the following informalities: applicant states in line 4 that the actuator "is in the first and second and third positions" when the first track is engaged with the first leg. This would require the actuator to be in all three positions at once. Examiner believes applicants means --is in the first **or** second **or** third positions-- when the first track is engaged with the first leg. The same situation applies in line six regarding the second track and second leg. Appropriate correction is required.

3. Claim 4 is objected to because of the following informalities: applicant states in lines 1-2 that "said tracks cam have surfaces that cam said legs...". First, there is no antecedent basis for "said tracks cam have surfaces", and examiner assumes applicant

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means --said tracks have cam surfaces--. Further, "cam" is used as a verb, and examiner is not aware of such usage, as the only definition found by examiner is:

cam**cam** (kàm) *noun*

An eccentric or multiply curved wheel mounted on a rotating shaft, used to produce variable or reciprocating motion in another engaged or contacted part.¹

4. Claim 4 recites the limitation "said retaining legs", in line 4, but only legs have been previously disclosed. Examiner assumes applicant considers the legs of claim 1 to be the retaining legs, but there is insufficient antecedent basis for this limitation in the claim.

5. Claim 10, line 23 (line 3 on page 29) recites "a first second comprising..." which is unclear. Based on line 17 of the claim and the description in the specification, examiner assumes applicant means --a second portion comprising--.

6. Claims 11 and 12 are objected to because "said end portions of said legs" in line 3 of the each respective claim, lacks antecedent basis. Examiner points out that claim 11 depends from claim 5. Comparing claim 6, which also depends from claim 5, the only difference between claim 6 and claim 11 is the slight difference that claim 11 recites "the end portion of said legs" while claim 6 recites only "said legs". Since claim 5 has never disclosed end portions of said legs, examiner believes applicant intends claim 11 to depend from claim 10, which does recite end portions of legs, and suggests that

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

this be reviewed in case the problem is not lack of antecedent basis but an inadvertent typing error in claim 11. A similar situation exists for claims 12 and 7.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites the limitation "between said tracks", in line 2, but tracks have never been introduced in the claim. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No.

6474921, hereafter Gordon 921 in view of common knowledge in the art as evidenced

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by Naylor "Dictionary of Mechanical Engineering, 4th ed, page 58. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious variants of each other -- the only difference is the actuation means.

Gordon 921 teaches a two part fastener comprising a base with legs and a connected actuator with first, second, and third positions of rotational movement, said actuator positions resulting in the movement of the legs between a first blocked position, a second locked in place position, and a third removable position, respectively.

It is well known that both linear(sliding) and rotational actuators can be used to change the position of linked structures in similar ways, as evidenced by Naylor's definition of a cam including the statement "The motion of the cam may be linear or rotary, usually the latter".

Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Gordon 921 and common knowledge in the art, as evidenced by Naylor, before him at the time the invention was made, to modify Gordon 921 as taught by common knowledge in the art to include the linear actuation of common knowledge in the art, in order to obtain positional change in a linear fashion. One would have been motivated to make such a combination because linear actuation is well known, and is easier to use by people with arthritis, and in spaces where specific dimensional requirements prohibit rotary actuators or where gripping and turning is difficult due to access limitations.

Conclusion

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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Katherine W Mitchell
Patent Examiner
Art Unit 3677

Kwm
9/20/04